



July 13, 2023

Congressman Tom McClintock
Chair
House Immigration Subcommittee
2256 Rayburn House Office Building
Washington, DC 20515

Congresswoman Pramila Jayapal,
Ranking Member,
House Immigration Subcommittee
2346 Rayburn House Office Building
Washington, DC 20515

Re: *Statement of the Asian Pacific Institute on Gender Based Violence re The Consequences of Non-Citizens Who've Engaged in Criminal Activity on US Communities (Hearing, July 13, 2023)*

Dear Subcommittee Chairman McClintock and Ranking Member Jayapal,

This testimony is submitted on behalf of the Asian Pacific Institute on Gender-Based Violence (API-GBV), a national resource center on domestic violence, sexual assault, human trafficking, and other forms of gender-based violence, serving a national network of advocates and community-based programs that work with Asian, Asian American, Native Hawaiian and Pacific Islander victims of gender-based violence. We appreciate the opportunity to submit this testimony relating to the intersection of the criminal legal system as it relates to the survivors that our colleague programs and advocates work with.

We urge Congress to refrain from enacting legislation that decreases the likelihood of the most vulnerable victims from seeking help, such as policies that incentivize increased local law collaboration with federal immigration authorities to enforce federal immigration laws; laws that fail to consider the likelihood that vulnerable victims are incorrectly identified or not identified at all, or coerced into criminal activity, and laws that reduce the consideration of victims' needs.

First and foremost, API-GBV wishes to express our deep concern about the framing the

discourse in a manner that conflates immigration with criminality, and signaling that immigrants are criminals. Our experience working with Asian American and Pacific Islander communities, including the recent context of targeted rhetoric and messaging related to China as a threat to national security, has demonstrated the connections between increases in violence against Asian American community members and divisive political rhetoric.

Relatedly, harmful and divisive stereotyping of targeted communities signals social devaluing and exclusion that victims of domestic and sexual violence and human trafficking often internalize. This internalization often results in victims experiencing feelings that their experiences are not important, and reducing their likelihood of reaching out for help.¹

The Importance of VAWA

Next year will mark the thirtieth anniversary of the bipartisan Violence Against Women Act (“VAWA”) which has, since it was first enacted, included critical protections for immigrant victims of domestic and sexual violence.² Congress reauthorized and reinforced VAWA’s protections for survivors in 2000 as part of the Victims of Trafficking and Violence Protection Act and created two new forms of immigration relief for survivors of trafficking and violence: U and T nonimmigrant status, more commonly known as the “U visa” and “T visa,”³ demonstrating Congress’ widespread desire to protect survivors of gender-based violence.⁴ Congress has continued to maintain and enhance immigrant survivor pathways in its 2005 and 2013 reauthorizations of VAWA.⁵

¹ See, Murray, C., Crowe, A., and Overstreet, N., *Sources and Components of Stigma Experienced by Survivors of Intimate Partner Violence*, Journal of Interpersonal Violence (2015), 1-22

² See 8 U.S.C. §§ 1154(a)(1)(A)(ii), 1154(a)(1)(B)(ii)

³ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. No. 106–386, 114 Stat. 1464–1548 (Oct. 28, 2000).

⁴ *Id.*

⁵ Violence Against Women and Department of Justice Reauthorization Act of 2005, P.L. 109-162 (2005); Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (codified in scattered sections of 42 U.S.C.).

As Congress moves forward in considering immigration proposals, we urge that members support the spirit and protections of VAWA in its entirety, including encourage victims to access government resources, such as courts, law enforcement and prosecutors for help to address victimization when they need them.

State and Local Police Enforcement of Federal Immigration Law Discourages Help Seeking

Proposals that increase local law enforcement of federal immigration laws serve to discourage vulnerable communities members from coming forth to seek police assistance, and run contrary to community policing efforts. Not only will immigrant domestic violence survivors fear reporting crimes they have experienced, it also discourages them from providing information to law enforcement that may prevent other crimes from being committed against others.

Abusers and traffickers use the fear of deportation of their victims as a tool to silence and trap them. If immigrants are afraid to call the police because of fear of deportation, they become more vulnerable to abuse and exploitation. Not only are the individual victims and their children harmed, but their fear of law enforcement leads many to abstain from reporting violent perpetrators or seeking protection and, as a result, dangerous criminals are not identified and go unpunished. As VAWA recognizes, immigrant victims of violent crimes often do not contact law enforcement due to fear that they will be deported. Immigrants are already afraid of contacting the police,⁶ i.e., immigrant victims of domestic violence without legal status can be half as likely to call police as those with stable legal status.⁷

⁶ A study conducted by the University of Illinois- Chicago found that increased involvement of local police and immigration enforcement eroded trust between the police and immigrants, undocumented and documented. 45% of documented immigrants were less likely to report a crime while 70% of undocumented immigrants responded similarly. See, <http://www.motherjones.com/politics/2015/07/sanctuary-cities-public-safety-kate-steinle-san-francisco>.

⁷ Orloff, L., et al, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA Women's L. J. 43, 60 (2003).

One example is a story shared by a colleague legal advocacy organization from a mountain state. Ana, a young Guatemalan girl, was sexually abused by a family friend. Her parents, who were undocumented, learned about the abuse, but were terrified about reporting the crime to the police. They were told by friends and that the police could not be trusted and they would be reported to immigration and deported if they stepped forward. A year later, the same perpetrator sexually abused another young child. In the end, after the father of that child contacted Ana's parents, they went to the police together and the perpetrator was caught and prosecuted. But because of their initial fear to report, another child was harmed. Unfortunately, when immigrants are afraid to come forward with information about crimes, the entire community is less safe.

This example is similar to numerous examples shared by our colleagues at the National Domestic Violence Hotline, who provide anonymous safety planning and support for victims, and who received almost 80,000 chats, and texts for assistance related to domestic violence on a monthly basis.⁸ The Hotline provided numerous examples of victims who had reached out to them for assistance, but who'd indicated they were afraid to call the police about the violence they'd experienced, even in instances of serious injury, rape, and strangulation, due to fear of negative impacts on their immigration status.⁹ Similarly, a 2019 national survey by a coalition of national victim advocacy organizations showed the chilling of effect on crime reporting and accessing the courts corresponding with increased immigration enforcement policies.¹⁰

⁸ See, National Domestic Violence Hotline, <https://www.prnewswire.com/news-releases/record-high-contact-volume-at-national-domestic-violence-hotline-underscores-increasing-needs-of-domestic-violence-survivors-301641896.html>

⁹ National Domestic Violence Hotline, NDVH story logs excerpted from calls to the Hotline, received by author, July 2023

¹⁰ *May 2019 Findings of Advocate Survey Regarding Immigrant Survivors*, Asian Pacific Institute on Gender-Based Violence (APIGBV), ASISTA, Casa de Esperanza: National Latin@ Network (now Esperanza United), National Alliance to End Sexual Violence (NAESV), National Domestic Violence Hotline (NDVH), National Network to End Domestic Violence (NNEDV), and Tahirih Justice Center, available at <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>.

Increased Crime-Related Immigration Penalties Also Harm Victims

Unfortunately, immigrant victims may already have reason to fear harsh consequences if they call the police for various reasons. Some victims fear jeopardizing their economic safety and housing if the consequences of calling police ultimately result in their partners being deported.¹¹ Other times, victims themselves may be improperly identified as perpetrators, especially if they are limited English proficient, and ultimately are placed in deportation proceedings because of failure to properly assess how abusers manipulate the legal system, or identify the primary aggressor in a dual arrest scenario.¹²

Other survivors of domestic violence, sexual assault, human trafficking, and other gender-based violence often have criminal convictions or arrests for acts committed outside of their control at the compulsion of their abusers or traffickers. For example, survivors often end up with criminal records for actions committed under the coercion of their abusers, or committed in self-defense, but survivors are also rarely identified as “survivors” at the time of their arrest or conviction.¹³ Survivors’ criminal records often result directly from their victimization and follow them throughout their lives, often revictimizing them all over again.

Survivors of abuse may have convictions from using violence in retaliation or in self-defense or may be arrested without using violence at all but in furtherance of an abuser’s manipulation or lies to law enforcement.¹⁴ More than 80% of incarcerated women have

¹¹ Bui, H. N., & Morash, M. (2007). *Social capital, human capital, and reaching out for help with domestic violence: A case study of women in a Vietnamese American community*. *Criminal Justice Studies: A Critical Journal of Crime, Law and Society*, 20(4), 375–390.

¹² See, e.g., Erez, E., & Hartley, C., *Battered immigrant women and the legal system: A therapeutic jurisprudence perspective*. 4 *Western Criminology Review* 2, (2003), pp. 155–169; See, e.g., Editorial, *Secure Communities Program: A Flawed Deportation Tool*, L.A. Times, May 23, 2011, <http://articles.latimes.com/2011/may/23/opinion/la-ed-secure-20110523>.

¹³ *Reasons for Intimate Partner Violence Perpetration Among Arrested Women*, 12 *Violence Against Women* 609 (2006); see also DeLeon-Granados et al., *Arresting developments: Trends in female arrests for domestic violence and proposed explanations*, 12 *Violence Against Women* 355 (2006)

¹⁴ Human Trafficking and the State Courts Collaborative, *Post-Conviction Relief for Human Trafficking Victims*

experienced domestic or sexual violence abuse or victimization at some point prior to custody,¹⁵ with the majority of abused women reporting both childhood abuse at home and then further abuse in later intimate partner relationships.¹⁶ Immigrant survivors of domestic and sexual violence can also be swept into the criminal legal system when perpetrators of abuse utilize the system as a tactic of control.¹⁷ It is not unusual for abusers to be more well-versed in, and able to manipulate the U.S. legal system than noncitizen victims.¹⁸

Human trafficking survivors are frequently forced to sell or transport illegal weapons or drugs or are forced into prostitution.¹⁹ They frequently come into contact with law enforcement and are arrested, detained, prosecuted, and even deported in some cases without being identified as a survivor.²⁰ However, many reports have concluded that trafficking survivors with repeated arrests for prostitution or prostitution-related offenses have never been identified as trafficking survivors.²¹

In addition, labor and sex trafficking survivors may be arrested for lesser offenses, such as possession of false identification documents or trespassing without being identified as a victim.²²

Convicted of Crimes Coerced By a Trafficker, at 1 (Aug. 2015), http://www.htcourts.org/wp-content/uploads/150904_PostConviction_Relief_forHTvictims_v05.pdf.

¹⁵ Kennedy, S. C., Tripodi, S. J., Pettus-Davis, C., & Ayers, J. (2015). *Examining dose-response relationships between childhood victimization, depression, symptoms of psychosis, and substance misuse for incarcerated women*. *Women & Criminal Justice*, 26:2, 77-98, doi:10.1080/08974454.2015.1023486.

¹⁶ Fuentes, C. M. (2014). *Nobody's child: The role of trauma and interpersonal violence in women's pathways to incarceration and resultant service needs*. *Medical Anthropology Quarterly*, 28(1), 85–104. doi:10.1111/maq.12058;

¹⁷ See, e.g., Lewis, *The Mills of Cruelty*, New York Times, Dec. 14, 1999 (“[F]or biting an abusive husband during a domestic dispute, Ms. Flores is to be deported.”).

¹⁸ Gael B. Strack, “She hit me, too” Identifying the Primary Aggressor: A Prosecutor’s Perspective 3, 5, available at http://www.ncdsv.org/images/she_hit_me.pdf; Miller, *The Paradox of Women Arrested for Domestic Violence: Criminal Justice Professionals and Service Providers Respond*, 7 *Violence Against Women* 1339, 1351–63 (2001).

¹⁹ Marsh, Anthony, Emerson, & Mogulescu, *State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking*, 5, Polaris Project (2019) <https://polarisproject.org/wp-content/uploads/2019/03/Grading-Criminal-Record-Relief-Laws-for-Survivors-of-Human-Trafficking.pdf>.

²⁰ *Clearing the State: Seeking Effective Remedies for Criminalized Trafficking Victims*, 16, CUNY School of Law, (June 2017) <https://mvlslaw.org/wp-content/uploads/2017/06/Effective-Remedies-for-Criminalized-Trafficking-Victims-CUNY-2014.pdf>.

²¹ *Id.* at 17.

²² Marsh, Anthony, Emerson, & Mogulescu, *supra* note 17.

Trafficked children are also charged with offenses, such as truancy and running away, without identifying them as trafficking survivors.²³ Young victims of abuse can also be criminalized for running away from their abusers.²⁴ Despite the fact that these crimes are often forced or coordinated by the abuser, survivors have criminal records attached to them, which create large barriers that impact every aspect of their lives from their employment prospects, livelihood, housing, health, family, education, and psychological well-being.

Recognizing that these penalties revictimize trafficking survivors, forty-four (44) states (but not all) have enacted a criminal record relief statute for survivors of human trafficking,²⁵ and thirty-eight (38), but not all, states have laws that explicitly provide an affirmative defense for trafficking survivors.²⁶ With respect to domestic violence, only three (3) states (New York, California, and Illinois) have passed explicit laws to this effect that provide some type of relief to survivors of domestic violence or abuse.²⁷ While states are beginning to recognize the harsh impacts of these convictions on survivors, federal immigration policy has failed to keep up.

Victimization of survivors of domestic and sexual violence and human trafficking and criminalization often go hand-in-hand. Because the victimization itself often gives rise to criminal activity – whether at the insistence of their abusers or traffickers, or committed in self-defense, any policies that seek to increase immigration penalties for crimes will directly impact victims.

In sum, we urge Congress to put forth policies that support vulnerable members of our communities to come forward to access help without fear, and to consider the varying

²³ *Id.*

²⁴ Bierria & Lenz, *Defending Self-Defense, Survived & Punished*, at 3 (Mar. 2022), <https://survivedandpunished.org/wp-content/uploads/2022/03/DSD-Report-Mar-21-final.pdf>.

²⁵ Marsh, Anthony, Emerson, & Mogulescu, *supra* at 10 (The six states lacking relief for victims of human trafficking include Alaska, Iowa, Maine, Minnesota, South Dakota, and Virginia).

²⁶ Richert, *Failed Interventions: Domestic Violence, Human Trafficking, and the Criminalization of Survival*, 120 Mich. L. Rev. 315, 327 n.93 (2021).

²⁷ N.Y. Penal Law § 60.12(1) (2021); Cal. Penal Code § 4801(a) (2021); 730 I.L.C.S. 5/5-5-3.1 (2020); 735 I.L.C.S. 5/2-1401 (2020).

needs of vulnerable survivors and their families as you move forward you to devise legislative responses. Thank you for your consideration. Please feel free to contact me with questions or concerns at ghuang@api-gbv.org.

Sincerely,



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